

1 SACRAMENTO, CALIFORNIA, MONDAY, OCTOBER 17, 2022, 9:22 A.M.

2 THE COURTROOM DEPUTY: Item 5, Criminal 20-221, the
3 United States versus Arturo Pacheco.

4 Counsel, your appearances?

5 MR. ANDERSON: Good morning, your Honor. Michael
6 Anderson and Rosanne Rust on behalf of the United States.

7 MR. FISCHER: Good morning, your Honor. David Fischer
8 on behalf of Mr. Pacheco, who's present out of custody.

9 THE COURT: Good morning.

10 The Court has received the final pre-sentence report
11 in this matter, which was made available on September the 12th,
12 and revised as of September the 26th of this year.

13 Mr. Fischer, have you received a copy of that report?

14 MR. FISCHER: Yes, your Honor.

15 THE COURT: And have you discussed it fully with
16 Mr. Pacheco?

17 MR. FISCHER: I have, your Honor.

18 THE COURT: Mr. Pacheco, have you received a copy of
19 the final pre-sentence report?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: And have you discussed it with your
22 attorney?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Who's speaking on behalf of the Government
25 here?

1 MR. ANDERSON: I am, your Honor.

2 THE COURT: Mr. Anderson, has the Government received
3 a copy of the report?

4 MR. ANDERSON: Yes, your Honor.

5 THE COURT: The Court has received the, the sentencing
6 memorandum submitted by Mr. Fischer as well as several letters
7 which have been provided to the Court. The Court has also
8 received Mr. Fischer's formal objections to the pre-sentence
9 report, which I would like to take up first.

10 Have you received a copy of those objections,
11 Mr. Anderson?

12 MR. ANDERSON: Yes, your Honor.

13 THE COURT: What is your response to his objection to
14 Paragraph 40 of the pre-sentence report?

15 MR. ANDERSON: Your Honor, consistent with the plea
16 agreement, we have no objection. I will note, as we noted in
17 our filing, that it does not affect the ultimate offense level
18 of calculation.

19 THE COURT: There being no objection to the objection,
20 or no opposition to it, the Court will make the requested
21 modification to the pre-sentence report, accordingly.
22 Paragraph 40 of the report is modified to a, an enhancement of
23 3 rather than enhancement of 5 points and the provision is
24 changed from Section 2A2.2(b)(3) to 2A2.2(b)(3)(A).

25 The adjusted offense level in Paragraph 47 is,

1 therefore, now 29 instead of 31 and that change will be made,
2 accordingly.

3 Likewise, on Page 13, Paragraph 57, the adjusted
4 offense level is modified from 31 to 29 on Counts 1 and 3.

5 Otherwise, the calculation of the sentencing
6 guidelines remains unchanged.

7 Are there any other objections to the calculation of
8 the sentencing guidelines, Mr. Fischer?

9 MR. FISCHER: No, your Honor.

10 THE COURT: Mr. Anderson?

11 MR. ANDERSON: No, your Honor.

12 THE COURT: The Court will, accordingly, adopt the
13 findings of the pre-sentence report as modified and finds that
14 the total offense level is 33 and the criminal history category
15 is 1, correct?

16 MR. ANDERSON: Yes, your Honor.

17 MR. FISCHER: Yes, that's right.

18 THE COURT: All right.

19 I, I've been over the pre-sentence report in detail
20 and there are some issues I'd like each of you to address in
21 your allocution.

22 First, in Paragraph 126 of the pre-sentence report the
23 probation officer suggests that an upward variance may be
24 warranted based upon the fact that the victim RP died and as
25 she points out, that that is not considered in the calculation

1 of the guidelines. There is a seven-level increase for serious
2 bodily injury, but it doesn't take account of the fact that the
3 injuries resulted in death.

4 So I'd, I'd like you to address that in your
5 allocution.

6 On the other side of the coin, however, in Paragraph
7 127 the probation officer points to Mr. Pacheco's admirable
8 military record and the fact that he has been diagnosed with
9 PTSD, which appears to be a legitimate diagnosis, and the
10 doctor at the VA has related that to unprovoked irritability
11 with periods of violence, suspiciousness, and, among other
12 things, an impaired impulse control.

13 And I'd like you to address that in your allocution
14 because the probation officer suggest that this may warrant a
15 consideration of a downward variance.

16 So with that in mind, I'll hear whatever you have to
17 say, Mr. Anderson. What would you like to say on behalf of the
18 Government?

19 MR. ANDERSON: Thank you, your Honor.

20 And your Honor, at some point we'd also ask that the
21 victim RP's family member have an opportunity address the Court
22 under the CVRA.

23 THE COURT: All right. We can do that. I didn't know
24 what you, what you had in mind here. Because the clerk just
25 handed me a, a one-page document entitled Victim Impact

1 Statement, which I had not received earlier.

2 Mr. Fischer, have you received a copy of that?

3 MR. FISCHER: I have.

4 THE COURT: Is it appropriate for the Court to hear
5 from the victim?

6 MR. FISCHER: Well, I, I don't think that there's
7 anything that allows me to object to it. The --

8 THE COURT: All right.

9 MR. FISCHER: -- the Rules allow for a written
10 statement and a verbal statement, or both. And --

11 THE COURT: All right.

12 MR. FISCHER: So I, I don't have a basis to object.

13 THE COURT: All right.

14 Then would you like me to hear that first before you
15 say what you have to say?

16 MR. ANDERSON: I would, your Honor. Thank you.

17 THE COURT: All right. I, I don't know that this is
18 signed. So I just know that it's a relative of the victim who,
19 who, who died.

20 MR. ANDERSON: Yes, your Honor. And he's approaching.
21 Ms. Daly is an attorney who's working with the family.

22 THE COURT: Right.

23 MR. ANDERSON: And --

24 THE COURT: I recognize her.

25 MS. DALY: Thank you your Honor. Kresta Daly on

1 behalf of Mr. Tucker. Mr. Tucker is RP's family member.

2 THE COURT: What's your name, sir?

3 MR. TUCKER: Takis Tucker, sir.

4 THE COURT: First name?

5 MR. TUCKER: Takis, Tom, apple, king, igloo Sam.

6 THE COURT: All right.

7 You may, you may proceed. What would you like to say?

8 MR. TUCKER: Basically, I just, want to just read the
9 Victim Impact Statement, give a little rundown after that,
10 nothing, you know, detrimental. I'm not here to point fingers
11 or, you know, wish bad on anybody, nothing like that. We all
12 suffer from PTSD, I understand that, and I just want to read
13 the Victim Impact Statement.

14 THE COURT: Well, I've read it, if, if that'll help
15 you. I don't, I don't think you have to read it again, but
16 would you like to highlight any portions of it?

17 MR. TUCKER: I just, I wanted to read it to his family
18 and to him, sir.

19 THE COURT: Okay.

20 MR. TUCKER: I don't think he heard it. I don't think
21 he heard the victim. Has he heard the Victim Impact Statement?

22 THE COURT: Well, I'm -- I'm -- he may have read it,
23 but if you want to read it, go ahead.

24 MR. TUCKER: Yeah. Because it's just like it was four
25 years. We didn't know anything about this and then to, it to

1 come to our knowledge about a month-and-a-half ago.

2 THE COURT: All right. You may read it.

3 MR. TUCKER: (Reading):

4 "As you -- you know, to prepare this statement has
5 been tremendously, tremendously difficult and painful.
6 My mom and I have cried before we started to write
7 this. We had to come to the sense and the reality
8 that Ronnie will not be coming home from prison. It
9 is difficult because even though Ronnie may have been
10 a felon and was -- and -- and was incarcerated, we
11 never would have, have imagined that a peace officer,
12 who was ordered to monitor and protect, would be the
13 cause of Ronnie's death.
14 From a physical standpoint, we have been drained,
15 okay? Our momentum with life had just come to a
16 standstill trying to grasp the who and why. For us
17 just, for us to just find out the circumstances of the
18 crime has made us pretty much weak. We were thrown
19 off and believed another inmate had done that to
20 Ronnie. That's what you guys have told us six years
21 ago. After thinking this was going to be a lifelong
22 mystery and to be made aware that it was, that it was
23 not an inmate is like being stabbed in the back.
24 The lack of energy has developed a stress-related
25 illness since the passing of Ronnie. My mom" --

1 We got issues with that. I don't want to get into
2 detail with that.

3 "We have suffered. It's like an empty space that lays
4 on, on the heart. It's sad to know that Ronnie is
5 dead. To first learn about this has given me
6 nightmares knowing my uncle went out in a gruesome
7 way. When I wake in the morning I think about not
8 ever wanting to go to prison and I always think about
9 self-control. I feel incredibly sad and cringe when I
10 think about how he was flipped up while he was
11 handcuffed behind his back.

12 I was more like a son to Ronnie. So it always brings
13 me to tears knowing I won't be able to see or talk to
14 him again. I've been diagnosed with stress and pain
15 and things like that. Parts of my body have been
16 hurting, prescribed medication for those things.
17 My mom, she says that she feels tired when she awakes
18 up every morning since the news. She cries when she
19 thinks about what happened to Ronnie and when she and
20 Ronnie were kids. She stated that she thinks about
21 all kinds of stuff from childhood days to the
22 nightmare of how he died. It has been exceedingly
23 difficult for her to sleep. She tends to stay up
24 later -- not going -- to try -- to try not to go to
25 sleep so sad. She admits that she has been more tired

1 since learning what really happened. My mom had
2 already been diagnosed with anxiety and depression
3 from a peace officer injuring my younger brother on a
4 lifelong basis. My brother hasn't walked or talked in
5 the last nine years, Los Angeles Police Department.
6 Now we've got a correction officer will do that to my
7 mom's brother.

8 So it is, it just adds another type of stress and
9 depression to have my mom to consume more medications
10 to deal with this reality.

11 Our relationship with people has gotten to a bare
12 minimum. To explain what happened is too painful and
13 it allows the sadness and the spirit to overtake us.
14 My view of the world as a safe and a fair place is a
15 joke. It made me feel like being black and a man and
16 if a person of authority is not having a good day or
17 has some outside problems, they can easily take it out
18 on you and ruin everyone's life at a drop of a dime.
19 This has been an added negative effect that my mom had
20 to experience and suffer again by the hands of a peace
21 officer. My mom has suffered from a mental breakdown
22 which caused for her to be hospitalized and prescribed
23 medications for her suffering.

24 One thing, Ronnie may have had some encounters with
25 the law, but, as we know him, he did not care about

1 anything but the well-being of his sister. He put his
2 family first. Ronnie had a calm demeanor and it would
3 take an awful lot to get him beside his stuff. Ronnie
4 was funny. He had a sense of humor and he loved hard
5 candies. I remember a time after his release he would
6 get with the family and he wanted to listen to his
7 favorite rapper" -- excuse me -- "his favorite singer,
8 Shayday" (phonetic) "Ronnie has always been there,
9 positively persuading me on staying out of trouble and
10 importance of higher education. He has always had an
11 influence on my, on me to stay focused and remembering
12 that education was the key to success. Therefore, I
13 made sure that I graduated with a master's degree in
14 public administration from Cal State University,
15 Northridge. Ronnie was empathetic towards us when he
16 made mistakes and past mistakes and he had to be
17 incarcerated. His main concern was for me to make
18 sure that I take care of his sister. Ronnie was a man
19 of self-respect. Ronnie had self-control. He had
20 respect for others and being humble were just some of
21 his characteristic traits. He respected himself and
22 others. Ronnie had respect for elders."

23 I understand what you was going through and feeling
24 like that, but I had to learn that you were 32 years old and
25 you did that to a 65-year-old man. So that's why I put that in

1 there about the elders. I know that he had respect for elders.

2 "He -- I have never heard him yell or curse loudly and
3 abruptly. He never blew up and went off the deep end.
4 He was big on self-control. I will never forget the
5 time when Ronnie told me that a man who holds back
6 power, who holds power, he knows how to not get angry
7 in as mad a situation. He was big on demonstrating
8 and expressing humbleness and how to not let people
9 get under your skin with words. Ronnie was a health
10 nut. He ate clean and taught me how to take all type
11 of vitamins by the mouthful. He was determined to
12 manage his business and get things done whether he was
13 in jail or not. Ronnie was relaxed and a good person
14 and he loved his family.

15 My mom and I, the rest of the family, we're going to
16 miss Ronnie."

17 Real quick, just to piggyback on something. When we
18 first -- my mom -- well, I bought her a house and I remodeled
19 the house and she was having an issue with me about her mail.
20 So we came to an agreement that I would give her her mail with
21 no problem because that's her personal mail --

22 (Cellphone playing music)

23 MR. TUCKER: -- and at that time, two days later this
24 mail comes. I take my part out, my mom's part, and I give it
25 to her. I go back to working in the yard. She comes to the

1 door -- I'll never forget that look with the paintbrush -- and
2 she said --

3 (Person talking on cellphone)

4 MR. TUCKER: Mom. You got to turn that off, Mom.
5 Just turn that phone off. You can't have that on like that.

6 Sorry for the interruption.

7 So I gave her the mail and she looked at it. She came
8 to the door and she told me that, "I knew they had did
9 something to my brother."

10 So I get the letter from the attorneys and the first
11 thing that came to my mind was the time when I was in Juvenile
12 Camp. I was in Juvenile Camp and they let me become the Group
13 Leader and once I became the Group Leader it was this one
14 person in, in the group, he was a jealous person. He was
15 jealous of me because of the situation that I was in. He
16 became jealous. And I'll never forget. We had showers and we
17 all went in there and took showers and the guy who was on the
18 opposite side by the wall and he was, he tried to provoke me.
19 He was mad and he tried to provoke me. He was saying, "Here's
20 the thing." He dissing me and saying all kind of little weird
21 stuff to try -- I wanted to drop everything and rush that guy
22 so bad.

23 So I didn't think about nothing else, but this what
24 came to my mind immediately and I thought, "So you mean to tell
25 me if I would have rushed that guy in that shower and slipped

1 and fell, I could have broke my jaw, had my teeth come out of
2 my mouth and possibly died two years or two days later." I
3 said, "Thank you, Lord, for self-control. Thank you, Lord, for
4 not putting me in that position at 15 years old, letting me
5 think about how to not get in a position that will be
6 detrimental to me and my family." I was so thankful for that
7 and then I had to face the reality of this. Okay.

8 So sir, with all due respect to, to, to you, just like
9 I said in the beginning. I'm not here to damn you, damn your
10 family, wish evil. We don't, we don't play those games. My
11 mom did not raise me on hate words. I promise you, sir. I
12 know that you did not expect for this to happen. You didn't
13 expect this outcome. It was a, you know, fluke, trying, you
14 know. I know how it go, you know? We forgive you. We're not
15 mad. We forgive you for this, okay? But as a, not being too
16 much older than you, with all due respect, all I want you to do
17 is just go and find out and make amends with the Lord on your
18 next journey. Make amends with the Lord. Help those other
19 inmates out to know about, you know, understand faith and that
20 God can help you out this situation. You going to be all
21 right, okay?

22 THE COURT: All right. You -- you -- you --

23 MR. TUCKER: And we're going to go from there and
24 that's it.

25 THE COURT: -- need to address the Court, not --

1 not -- not --

2 MR. TUCKER: Oh. Well, I'm just letting him know,
3 sir, 'cause he's getting ready to go to prison. So you know --

4 THE COURT: I know.

5 MR. TUCKER: -- I understand that.

6 THE COURT: But you -- you -- it's --

7 MR. TUCKER: I'm talking to you, too, sir.

8 THE COURT: All right.

9 MR. TUCKER: I'm talking to the whole Court. You
10 know, I respect -- and thank you, guys, for even notifying us
11 and letting us know because you didn't even have to let us
12 know. So we respect everything.

13 THE COURT: All right.

14 MR. TUCKER: All right.

15 THE COURT: Thank you. It's, it's important --

16 MR. TUCKER: Yeah. It was --

17 THE COURT: It's important not to lose sight of the
18 victims.

19 MR. TUCKER: Oh, absolutely. Yeah. Thank you.

20 THE COURT: All right.

21 MR. TUCKER: All right. Have a good day.

22 THE COURT: All right. Mr. Anderson, what would you
23 like to say on behalf of the Government?

24 MR. ANDERSON: Thank you, your Honor.

25 Your Honor, as the Court knows, this is a very serious

1 crime that was committed by somebody who was in a position of
2 trust and to run a justice system people like the defendant
3 need to be able to be trusted, to be truthful, and follow the
4 law.

5 The Court has asked two questions about two of the
6 paragraphs in the PSR. Those, those paragraphs have to do
7 with, first, the seriousness of the assault, and I think part
8 of what the Court should consider is the end results of what
9 happened. A man died who shouldn't have died, who shouldn't
10 have been in that position, but the murder guidelines don't
11 apply here for a reason and that's because of the attenuation
12 that we see in Paragraph 22 of the PSR and it, it deals with
13 sort of the gap in time and this intervening event of a blood
14 clot that ultimately caused Mr. Price's death.

15 So this is an extremely serious assault and I think
16 while we could say in some sense but for that assault, it
17 appears unlikely that Mr. Price would have died or certainly
18 died then. This is not the proximate cause situation where
19 this assault caused that death immediately or where this is a
20 murder that was premeditated by Mr. Pacheco.

21 THE COURT: That's a cogent comment because I noted
22 that the doctor who did the autopsy used the word "homicide."

23 MR. ANDERSON: So the, the doctor who did the autopsy,
24 I don't believe used the word "homicide," but the coroner who
25 then reviewed that autopsy report, as the Court said, said

1 "homicide." The FBI looked into that and asked follow-up
2 questions about that homicide and those, sort of a summary of
3 that is contained in Paragraph 22 of the PSR, the end result of
4 it being that there's that separation in time and causation
5 which is why we thought very carefully about it, but treated
6 this as a very, very serious assault, which it was, which did
7 have the consequence of death, but was not --

8 THE COURT: What, what would it have taken for the
9 guidelines to have been enhanced if there was a, a finding of
10 proximate cause? Would that -- would, would you have to go to
11 the murder guidelines or would you only go to homicide?

12 MR. ANDERSON: Right. So, so the question would be do
13 we have a first-degree murder or a second-degree murder? Is it
14 a depraved-heart murder where there was extreme recklessness,
15 which --

16 THE COURT: Or was it just not a crime? You see, if
17 it's a proximate cause, it doesn't have to be a crime. You're
18 saying that you didn't or you weren't satisfied that there was
19 a chain of causation.

20 MR. ANDERSON: We were -- we're saying that we were
21 not satisfied that we could sustain a conviction or the
22 guidelines in front of this Court on a murder charge.

23 THE COURT: Okay. I, I'm not talking about murder.

24 MR. ANDERSON: Uh-huh (indicating an affirmative
25 response).

1 THE COURT: I'm talking about if you were satisfied
2 that Mr. Pacheco's actions proximately caused the death of the
3 victim, would the guidelines be different or would you be
4 asking for a different sentence?

5 MR. ANDERSON: I, I see what you're saying.

6 I think we would be asking for a different sentence.
7 We'd be asking for a higher sentence whether --

8 THE COURT: Or would the guidelines be different?

9 MR. ANDERSON: I don't think so, your Honor. I think
10 the guidelines would be the same, but the way you would get
11 there is through either an upward departure or an upward
12 variance.

13 That said, I, I don't think we can ignore how serious
14 this assault was or that it put Mr. Price in that position.
15 And so that's a factor that I think pushes toward a higher
16 sentence and balances against some of the things that the Court
17 also mentioned with regard to, to the defendant's PTSD.

18 And the PTSD is interesting, too, because there's no
19 chain of causation there, either. So they've been unable to
20 identify a doctor or an expert who says that this incident or
21 the prior incident was caused by PTSD. And one thing they
22 absolutely cannot show is that the lies that he told afterward
23 were in any way related to the mental condition.

24 So I, I think one of the really essential things to
25 remember in this offense is he didn't just react one time, but

1 there were, there was more than one event where he acted out
2 violently against a person who was restrained who could not
3 fight back and then in each of those instances he told fairly
4 elaborate lies to cover up what he had done, the first instance
5 doing it by himself, but in the second instance with Mr. Price,
6 getting a large number of CDC officers and guards to
7 participate in this coverup.

8 So he relied on this and encouraged others to lie and
9 using this code of silence to protect himself and protect
10 himself from justice, the idea being what happens behind these
11 prison walls Mr. Pacheco can lie about, he can do whatever he
12 wants, and he'll be supported by these other officers and the
13 Government, the FBI, CDCR, the Court will never know about it.
14 And, and he relied on that in a way that I think is really,
15 really important to remember as the Court is considering the
16 sentence to impose. It justifies a very big sentence not just
17 because the seriousness of the crime and the damage it does to
18 the justice, pursuit of justice, but also because it, it
19 reflects on the importance of deterrence in this type of
20 situation. It's very, very important that it be understood
21 that that code of silence doesn't work, that there are serious
22 penalties on the other side of this, and that ultimately, it's
23 judges not jailers that are going to impose sentences in
24 prison.

25 This is a man who essentially decided that he was

1 going to sentence two men to be assaulted and hurt very
2 seriously because of his own views on their worth and what they
3 deserved, but that's, that's so contrary to how our system
4 works, right? We're a system where we have laws. You come
5 into court, a sentence is imposed. That sentence needs to be
6 within the Constitution, not something that is done in the
7 instance by a CDCR officer who thinks he can get away with it
8 and cover it up. It's a position that no law enforcement
9 officer should ever put themselves in.

10 THE COURT: For purposes of deterrence, how, how much
11 difference do you think it makes between a sentence of 151
12 months which you're asking for and 121 months which Mr. Fischer
13 is asking for?

14 MR. ANDERSON: I think it makes a difference, I think
15 it makes a substantial difference because 151 months is in that
16 guidelines range, in the middle of the guidelines range, and
17 reflects the application of all the enhancements that
18 rightfully apply in this case, that someone was restrained,
19 that they were vulnerable, the position of trust that the
20 defendant was in, and it says each of these things are
21 important and each of these things leads to a bigger sentence.

22 THE COURT: But others, others who might contemplate
23 the same type of conduct wouldn't be that sophisticated.
24 They'd see that it's a sentence greater than ten years.

25 MR. ANDERSON: I, I think in a way that's an argument

1 you could make with any of the sentences that the Court
2 imposes. We always have to pick a number and could it be one
3 month lower or one month higher, but in this case when you
4 apply the 3553 factors, including those guidelines, it's
5 suggesting that a really substantial sentence is warranted and
6 that 151 months is a substantial sentence, 12-1/2 years, which,
7 which indicates how seriously, how seriously the guidelines and
8 the sentencing factors take this crime. It -- it -- even
9 leaving aside the ultimate death of Mr. Price, this is an
10 assault that left his face, broken jaw, bloody, blood coming
11 out of his ear. I mean, it was a very, very serious assault
12 that was unprovoked to a man who had his hands restrained
13 behind his back who was 65 years old attempting to just, as, as
14 his family member said, you know, avoid violence, get, get his
15 way out of prison, and instead, he ended up in the hospital and
16 then, of course, ultimately died.

17 And, and we see a really similar thing with the
18 earlier incident, too. So we, we have an inmate who's in a
19 prison cell behind a door and he's ordered to come closer to
20 the door so that Mr. Pacheco can spray him through the door in
21 the eyes. He's ordered to open his eyes. He complies. He
22 opens his eyes and looks at Mr. Pacheco so that he can be
23 assaulted with spray that even under CDCR guidance should not
24 be used at that distance unless it's absolutely necessary.

25 THE COURT: Do you think that as a former correctional

1 officer Mr. Pacheco would be himself subject to greater risk of
2 violence in prison?

3 MR. ANDERSON: Our plan today, your Honor, is to ask
4 the Court, or to agree to recommend a self-surrender date so
5 that Mr. Pacheco can be designated to a prison and self-
6 surrender at a, at a particular facility once he's been
7 designated. BOP will have all of the information necessary to
8 understand what it will take to keep him safe and he will,
9 unfortunately, not be the only correctional officer, prison
10 guard, police officer, who is in federal custody. There are,
11 unfortunately, many civil rights violations like this one
12 across the country and he will not be the only inmate kept in
13 that way.

14 So, so there are ways to do that. We're not asking
15 for him to go into the Sacramento County Jail today.

16 THE COURT: Anything else you wanted to say?

17 MR. ANDERSON: Your Honor, ultimately, this is a, this
18 is a crime that erodes the community's trust in the justice
19 system, the trust that people have in those that wear a badge,
20 that work in law enforcement. It's a crime that Mr. Pacheco
21 knew through training, through experience that he should not
22 commit, and ultimately, he violated his oath and lied and I
23 think that the Court should impose a 151-month sentence to
24 reflect the seriousness of that crime and we ask the Court to
25 do so.

1 Thank you.

2 THE COURT: Mr. Fischer, what would you like to say?

3 MR. FISCHER: Your Honor, I, I would like to just
4 start by saying that the sentence that we're asking the Court
5 to impose is 121 months. It's more than ten years and by no --
6 and, and Mr. Pacheco acknowledges that what he did was wrong.
7 He is extremely remorseful for what he did and I think that's
8 a, the first thing that he would like you to know, that he
9 understands, and I think that's how I want to start this
10 presentation.

11 With regard to the Court's specific questions about
12 upward variance due to the, the fact that Mr. Price ultimately
13 died, I think the one part of the conversation that got left
14 out between you and the Government was the fact that this
15 pulmonary embolism was undiagnosed and it was undiagnosed at UC
16 Davis Medical Center and I think had there, in looking at
17 literature from the Mayo Clinic, if somebody is actually
18 diagnosed with the condition, they have a very good chance of
19 not dying as a result. In this particular case, the discovery
20 and the reports that I have are that he was on the floor and
21 then they put Mr. Price in the bed and put him on a breathing
22 mask and things like that. I -- it seemed to me and my memory
23 in reviewing discovery that nobody knows about this pulmonary
24 embolism part until the autopsy.

25 So there's no doubt that he had difficulty breathing,

1 that they put a mask on him, and things like that. But
2 ultimately, I think had his pulmonary embolism been diagnosed
3 there would be a significant chance that he would not have
4 died.

5 THE COURT: No, but we all know from basic tort law
6 that intervening negligence in medical treatment is not the
7 break in proximate cause, yet, yet the Government seems to
8 concede that they can't prove proximate cause.

9 MR. FISCHER: Right. I think that's just in addition
10 to -- I, I think that there, the conversation you had is
11 correct. There is this causation issue and whether this, this
12 pulmonary embolism, whether he's the proximate cause of that,
13 and I think a, a step in addition to that is the fact that it
14 wasn't diagnosed.

15 So that's what I have to say about that.

16 And with regard to, the second question the Court
17 asked about the PTSD, I think what, the frustration that
18 impacts the impaired impulse control is something that needs to
19 be considered. You know, again, Mr., Mr. Pacheco acknowledges
20 that what he did was wrong. He's extremely remorseful.
21 Nothing that either of these people did, they did not deserve
22 any, to be injured by Mr. Pacheco for anything that they did.
23 But just the, the things leading up that have to do with
24 impulse, impaired impulse control and the PTSD, I think go into
25 frustration. Like with the, with the, the first victim with

1 the pepper spray incident, there's the situation where, you
2 know, he's creating this massive disturbance that could lead to
3 a riot or something very serious in the yard. They put him
4 into a cell for his own protection and then the guy breaks out
5 the window and causes another problem. I think it's that
6 frustration that gets billed from somebody who is just not
7 complying, who's being a problem that kind of -- you know,
8 Mr. Pacheco's response to that shouldn't have been to pepper
9 spray him and he knows that and it was wrong to do so, but as
10 the probation report --

11 THE COURT: I, I can understand that, I can understand
12 that argument and, and it might be better for you if you had a
13 doctor that would actually say that.

14 But the Government makes it, the point that it's not
15 just the conduct. It's the covering up and there isn't even a
16 suggestion that the PTSD has any relationship to that, is
17 there?

18 MR. FISCHER: I, I think it's just part and parcel of
19 the whole, the, committing the crime, the response to it. It's
20 all part and parcel.

21 THE COURT: It's --

22 MR. FISCHER: I think the, the response and everything
23 else is -- is -- and it's not a defense to the crime. It's
24 just something --

25 THE COURT: It's a whole different culture, though.

1 It's a whole different -- I don't see any, even suggestion
2 that, that that could somehow be influenced by PTSD.

3 MR. FISCHER: Well, the, the actual, the assault
4 itself, I think those arguments go to the assault themselves
5 as --

6 THE COURT: Right. Right.

7 MR. FISCHER: -- opposed to the covering part.

8 THE COURT: But that's what I'm asking you to address.
9 The Government's argument that it, it's not just the assaults.
10 It's the covering up, the whole culture that he created at the
11 institution that is, is toxic.

12 MR. FISCHER: That's, that's wrongful and he
13 acknowledges that. And absolutely, a sentence of 121 months
14 would reflect the seriousness of that.

15 So I, I guess those, those are the comments I have. I
16 think with the frustration and PTSD and, and a lack of impulse
17 control goes to the assault part, not specifically to, to
18 covering it up.

19 Again, I, I, I put the arguments in the sentencing
20 memorandum as to why we, we feel that a sentence of 121 months
21 is, is appropriate. It's a very severe sentence for somebody
22 who has served our country, who has acted very well, who has
23 had a lack of criminal record before this or since this, and
24 somebody who's never going to be in a position where this type
25 of situation is going to happen again.

1 So for all those reasons, we'd ask the Court to impose
2 121 months.

3 THE COURT: Mr. Pacheco, what would you like to say on
4 your own behalf?

5 THE DEFENDANT: I'm extremely remorseful, your Honor.
6 I apologize.

7 THE COURT: This is a very difficult decision for the
8 Court. I'm looking at the probation officer's report, again,
9 in which she sets forth the justification for her
10 recommendation and there is so much there to consider.

11 Needless to say, the, the Court has considered the
12 sentencing guidelines and all of the other relevant factors in
13 Section 3553(a) of Title 18, United States Code. On the one
14 hand, the statement of the victim's nephew is very persuasive.
15 The Court can neither lose sight of the fact that there are
16 victims to these crimes and sometimes we do. Sometimes we only
17 see the defendant here and we don't remember that it was
18 someone whose life was changed or ruined as a result of the
19 conduct of the defendant.

20 One thing that I would add is that when judges
21 sentence someone to prison, we need to know that they're going
22 to be safe. We couldn't do our job if we thought that the
23 people that we sent to prison would be assaulted or killed or
24 otherwise mistreated as a result of their being in prison.

25 So as the Government points out, the whole system

1 depends upon our being assured that when we send someone to
2 prison this kind of thing isn't going to happen.

3 On the other side, we know that PTSD is real. It's,
4 it's, it's not something that we can just look at in a book and
5 there's a lot we don't know about it. We also need to know
6 that when we send a soldier to battle, that he's going to be
7 safe and this wasn't diagnosed until it was too late and I
8 think there's a real likelihood that this would not have
9 occurred but for the PS, PTSD that Mr. Pacheco suffered as a
10 result of serving his country.

11 Neither of these considerations is taken into account
12 in the guidelines and the, the question is does anything that I
13 have heard justify a variance from the guidelines and, and I
14 would say that they might except that each one of these factors
15 that I have made reference to suggests a variance in, in the
16 opposite direction and I'm left with the conclusion that the
17 best sentence, the one that is sufficient but not greater than
18 necessary to accomplish all of the relevant purposes, both of
19 the sentencing guidelines and otherwise, is a sentence within
20 the guideline range. Do I sentence to the 151 months
21 recommended by the Government and the probation officer or do I
22 sentence somewhere else within the guidelines? Again,
23 there -- there's -- there's very little to suggest to me that a
24 sentence in the middle of the guidelines, which has been
25 proposed by the probation officer, is, is not the best sentence

1 under the circumstances. It is, admittedly, a, a harsh
2 sentence and it sends out a very strong message and I don't
3 think that that's a stronger message than needs to be sent.

4 If it were not for the coverup, we could, I could
5 probably conclude that a lesser sentence within the guidelines
6 was appropriate, but with everything that Mr. Pacheco did to
7 cover up his actions and as a result -- it hasn't even been
8 discussed yet -- damaged his, his fellow officers. Some have
9 been disciplined. Others have been compromised. All of that
10 is something that's also not taken into account. And so I
11 think that the, the sentence recommended by the probation
12 officer is the appropriate sentence in the, in this case.

13 So pursuant to the Sentencing Reform Act of 1984 it is
14 the judgment of the Court that the defendant is hereby
15 committed to the custody of the Bureau of Prisons to be
16 imprisoned for a term of 120 months on each of Counts 1 and 2
17 and a term of 151 months on Counts 3 and 4, all to be served
18 concurrently, for a total term of imprisonment of 151 months.
19 The defendant shall pay a special penalty assessment of \$400,
20 payment to begin immediately. The Court finds that the
21 defendant does not have the ability to pay a fine and,
22 therefore, the imposition of a fine is waived.

23 Upon release from imprisonment, the defendant shall be
24 placed on supervised release for a term of 36 months on each of
25 Counts 1, 2, 3, and 4, all to be served concurrently, for a

1 total term of 36 months.

2 Within 72 hours of release from the custody of the
3 Bureau of Prisons, the defendant shall report in person to the
4 Probation Office in the District to which he is released.

5 While on supervised release, the defendant shall not
6 commit another federal, state, or local crime and shall not
7 illegally possess controlled substances.

8 He shall cooperate in the collection of DNA as
9 directed by the probation officer and shall comply with the
10 standard conditions which have been recommended by the United
11 States Sentencing Commission and adopted by this Court.

12 Further, he shall refrain from any unlawful use of a
13 controlled substance and he shall submit to one drug test
14 within 15 days of release from imprisonment and at least two
15 periodic drug tests thereafter not to exceed four drug tests
16 per month.

17 Mr. Fischer, have you gone over the special conditions
18 listed on Pages 3 and 4 of the pre-sentence report with
19 Mr. Pacheco?

20 MR. FISCHER: Yes, your Honor.

21 THE COURT: Mr. Pacheco, have you read and do you
22 understand those special conditions?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Very well.

25 The Court adopts those special conditions listed on

1 Page 3 and 4 of the pre-sentence report as conditions of
2 supervised release.

3 What institution do you recommend or do you suggest
4 that the Court recommend, Mr. Anderson?

5 MR. ANDERSON: Your Honor, generally, defense makes a
6 specific recommendation. For the Government's part, just a
7 recommendation that a facility be selected consistent with
8 Mr. Pacheco's prior employment as a CDCR officer.

9 THE COURT: Well, I want to make sure they give due
10 consideration to that because that's part of what you've
11 represented to the Court. You don't know what that would be,
12 however.

13 MR. ANDERSON: I don't know specifically where BOP
14 will decide to put him, given the other factors that they're
15 going to have to evaluate with regard to a security
16 classification, but I, I believe that this will be a very
17 prominent part of that decision making.

18 THE COURT: All right.

19 Do you have any specific suggestions, Mr. Fischer?

20 MR. FISCHER: We would just like to, to be as close to
21 Cal, Northern California as possible in the appropriate
22 institution.

23 THE COURT: All right. It might be a good idea here
24 for you to be in touch with the Bureau of Prisons and make sure
25 they give proper rate, weight. Because you've suggested one

1 thing, that he wants to be close to Northern California. I
2 don't know if that's best for his own protection or not.

3 So I, I want to make sure that due consideration is
4 given to all of these concerns.

5 MR. FISCHER: Understood.

6 THE COURT: The Court will recommend that, that
7 Mr. Pacheco be incarcerated at an institution close to Northern
8 California, but one in which the Bureau of Prisons is satisfied
9 that due consideration is given to his protection and the fact
10 that he has been a correctional officer and all of, all of the
11 other considerations dealing with security classification and
12 space availability.

13 What date would you suggest for surrender?

14 MR. ANDERSON: Your Honor, I'd suggest something at
15 least six weeks out to make sure that the designation has time
16 to be completed prior to that date.

17 THE COURT: Mr. Fischer, what would you suggest?

18 MR. FISCHER: I would suggest January 6th.

19 THE COURT: That's a Friday. I don't know if they'd
20 like it on Friday. I -- I -- I -- I'm, I'm going to go with
21 January the 10th, is that all right?

22 MR. FISCHER: Yes.

23 THE COURT: All right.

24 Mr. Pacheco, you're ordered to turn yourself in at the
25 institution selected by the Bureau of Prisons by 2:00 p.m. on

1 January the 10th.

2 THE DEFENDANT: Thank you. Thank you, your Honor.

3 THE COURT: All right.

4 He's waived his right to appeal, correct?

5 MR. ANDERSON: Yes, your Honor, he has.

6 MR. FISCHER: Yes, your Honor.

7 THE COURT: Is there anything else we need to cover at
8 this time?

9 MR. ANDERSON: No, your Honor. There are no counts
10 that need to be dismissed.

11 THE COURT: All right. Thank you.

12 MR. ANDERSON: Thank you.

13 THE COURTROOM DEPUTY: Court's adjourned.

14 (Proceedings concluded at 10:10 a.m.)
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CERTIFICATE

I, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

/s/ Janice Russell

February 21, 2023

Janice Russell, Transcriber

Date